

49-13-101. Title.

This chapter is known as the "Public Employees' Noncontributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided" has the same meaning as defined in Section 49-12-102.

(2) (a) Except as provided in Subsection (2)(c), "compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

- (i) bonuses;
- (ii) cost-of-living adjustments;
- (iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law; and
- (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).

(c) "Compensation" does not include:

- (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
- (ii) the cost of any employment benefits paid for by the participating employer;
- (iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
- (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or
- (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.

(3) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to the following:

(a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:

- (i) the member has transferred from another agency; or
- (ii) the member has been promoted to a new position.
- (c) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement.
- (4) "Participating employer" means an employer which meets the participation requirements of Sections 49-13-201 and 49-13-202.
- (5) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.
- (b) "Regular full-time employee" includes:
 - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time or more;
 - (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-13-407;
 - (iv) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and
 - (v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.
- (c) "Regular full-time employee" does not include a classified school employee:
 - (i) (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer; or
 - (ii) (A) who is hired before July 1, 2013;
 - (B) who did not qualify as a regular full-time employee before July 1, 2013;
 - (C) who does not receive benefits normally provided by the participating employer; and
 - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer.
- (6) "System" means the Public Employees' Noncontributory Retirement System.
- (7) "Years of service credit" means:
 - (a) a period consisting of 12 full months as determined by the board;
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States

government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 15, 2014 General Session

49-13-103. Creation of system.

There is created for members employed by a participating employer the "Public Employees' Noncontributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-104. Creation of trust fund.

(1) There is created the "Public Employees' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-201. System membership -- Eligibility.

(1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.

(a) A person entering regular full-time employment with the state or its educational institutions after July 1, 1986, but before July 1, 2011, is eligible for service credit in this system.

(b) A person entering regular full-time employment with the state or its educational institutions after July 1, 2011, who has service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible for service credit in this system.

(c) A regular full-time employee of the state or its educational institutions prior to July 1, 1986, may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.

(2) An employer, other than the state and its educational institutions, may participate in this system except that once an employer elects to participate in this system, that election is irrevocable and the election must be made before July 1, 2011.

(a) Until June 30, 2011, a person initially entering regular full-time employment with a participating employer which elects to participate in this system is eligible for service credit in this system.

(b) A person in regular full-time employment with a participating employer prior to the participating employer's election to participate in this system may either become

eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.

(3) Notwithstanding the provisions of Subsections (1) and (2), a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 15, 2014 General Session

49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements -- Service credit purchases.

(1) (a) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.

(b) In addition to their participation in this system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

(2) The following employers may be excluded from participation in this system:

(a) an employer not initially admitted or included as a participating employer in this system before January 1, 1982, if:

(i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or

(ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;

(b) an employer that is a charter school authorized under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and does not elect to participate in accordance with Section 53A-1a-512;

(c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (5);

(d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes an election of nonparticipation in accordance with Subsection (5); or

(e) an employer that is a risk management association initially created by interlocal agreement before 1986 for the purpose of implementing a self-insurance joint protection program for the benefit of member municipalities of the association.

(3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission under Subsection (4).

(4) (a) An employer may, by resolution of its governing body, apply for admission to this system.

(b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.

(5) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.

(ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state may make an election of nonparticipation as an employer for retirement programs under this chapter.

(iii) On or before July 1, 2010, an employer described in Subsection (2)(e) may make an election of nonparticipation as an employer for retirement programs under this chapter.

(b) An election provided under Subsection (5)(a):

(i) is a one-time election made no later than the time specified under Subsection (5)(a);

(ii) shall be documented by a resolution adopted by the governing body of the employer;

(iii) is irrevocable; and

(iv) applies to the employer as described in Subsection (5)(a)(i), (ii), or (iii) and to all employees of that employer.

(c) The employer making an election under Subsection (5)(a) may offer employee benefit plans for its employees:

(i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or

(ii) under any other program.

(6) (a) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

(b) For a purchase made under this Subsection (6), an employee is not required to:

(i) have at least four years of service credit before the purchase can be made; or

(ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

Amended by Chapter 15, 2014 General Session

Amended by Chapter 201, 2014 General Session

Amended by Chapter 363, 2014 General Session

49-13-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be

performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed with an employer that has elected to be excluded from participation in this system under Subsection 49-13-202(5), effective on or after the date of the employer's election under Subsection 49-13-202(5); or

(g) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude new employees from participation in this system under Subsection 49-11-623(3).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before the date of the election under Subsection 49-13-202(5) is not affected under Subsection (1)(f).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

- (f) an employee of the Commission on Criminal and Juvenile Justice;
 - (g) an employee of the Governor's Office;
 - (h) an employee of the State Auditor's Office;
 - (i) an employee of the State Treasurer's Office;
 - (j) any other member who is permitted to make an election under Section 49-11-406;
 - (k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;
 - (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and
 - (m) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- (5) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).
- (b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer.
- (6) (a) In accordance with this section, a municipality, county, or political subdivision may not exempt more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is lesser.
- (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (7) Each participating employer shall:
- (a) file employee exemptions annually with the office; and
 - (b) update the employee exemptions in the event of any change.
- (8) The office may make rules to implement this section.

Amended by Chapter 15, 2014 General Session
Amended by Chapter 365, 2014 General Session

49-13-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

- (1) (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or in a retirement system with a public or private retirement system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).
- (b) The election is final, and no right exists to make any further election.
- (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
- (b) Each institution of higher education shall prepare or amend existing

employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:

- (i) this system; or
- (ii) a public or private system, organization, or company designated by the Board of Regents.

(c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.

(3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.

(4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.

(5) (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system shall have a one-time irrevocable election to participate in this system.

(b) The election under Subsection (5)(a) shall be made before June 30, 2010.

(c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.

(d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.

(6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment while covered under another retirement program by complying with the requirements of Section 49-11-403.

(7) The board shall make rules to implement this section.

Amended by Chapter 15, 2014 General Session

49-13-205. Conversion to system -- Time schedule -- Conversion windows.

(1) An employee governed under Section 49-13-201 shall make the election to participate in this system within six months of July 1, 1986.

(2) (a) (i) An employer governed under Sections 49-13-201 and 49-13-202 shall make the election to participate in this system within six months of July 1, 1986.

(ii) The employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.

(iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the employer, at which all employees of the political subdivision shall be given an opportunity to be heard on the question of participating in this system.

(iv) Notice of the hearing shall be mailed to all employees within 30 days of the

hearing and shall contain the time, place, and purpose of the hearing.

(b) A regular full-time employee has six months from the date the employer elects to participate in this system in which to make the election to participate in this system and become eligible for service credit in this system.

(3) Subsections (1) and (2) shall be used to provide a second time period of conversion to this system beginning July 1, 1990.

(4) Subsections (1) and (2) shall be used to provide a third time period of conversion to this system beginning July 1, 1995.

(5) Subsection (2) shall be used to provide a fourth time period of conversion to this system beginning July 1, 2009 for an entity created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act, and the entity's employees.

(6) A member of the Contributory Retirement System who is employed by one agency and who either transfers to or is reemployed by another agency shall be enrolled in the Noncontributory Retirement System as of the date of employment, if the participating employer has elected to participate in the Noncontributory Retirement System.

Amended by Chapter 221, 2009 General Session

49-13-301. Contributions -- Two levels.

(1) Participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, this system is divided into two levels according to participating employers as follows:

(a) Level A includes the state, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.

(b) Level B includes all other participating employers in this system.

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-302. Purchase of service credit.

Any member who works 20 or more hours per week for a participating employer participating in this system, but does not meet other eligibility requirements for service credit, may purchase such service credit in accordance with Section 49-11-403.

Enacted by Chapter 250, 2002 General Session

49-13-303. Supplemental benefit established -- Defined contribution plan options -- Contribution by employer and employee -- Immediate vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.

(1) (a) Participating employers in Level A under Section 49-13-301, which are participating educational institutions or participating employers whose activities are associated with participating educational institutions, shall make a nonelective contribution on behalf of each of its regular full-time employees who are members of

this system an amount equal to at least 1.5% of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the regular full-time employee and which is sponsored by the board, by that Level A employer, or by a group of similar Level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) All other Level A participating employers under Section 49-13-301 shall make a nonelective contribution on behalf of each of its regular full-time employees who are members of this system an amount equal to at least 1.5% of the member's compensation to the defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

(c) The member or participating employer may make additional payments to either the qualified 401(k) plan which receives the 1.5% employer contribution described in this Subsection (1), or to any other defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the member and sponsored by the board, that Level A employer, or a group of similar Level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(2) (a) Participating employers in Level B under Section 49-13-301 may make nonelective contributions on behalf of each of its regular full-time employees who are members of this system to the 401(k) defined contribution plan sponsored by the board or to a qualified plan sponsored by the participating employer which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may also make voluntary deferrals to the same 401(k) plan which the member selected to receive the employer contribution described in Subsection (2)(a).

(3) Each qualified defined contribution 401(k) plan is separate and distinct from any other qualified defined contribution 401(k) plan for all purposes, including purposes of fiduciary liability and plan administration.

(4) A member may not make voluntary deferrals to any other qualified 401(k) plan sponsored by a state or local government.

(5) The total amount contributed by the participating employer and the member under Subsection (1) or (2) vests to the member's benefit immediately and is nonforfeitable.

(6) The board may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(7) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Renumbered and Amended by Chapter 250, 2002 General Session

**49-13-401. Eligibility for an allowance -- Date of retirement --
Qualifications.**

(1) A member is qualified to receive an allowance from this system when:

(a) except as provided under Subsection (3), the member ceases actual work for

every participating employer that employs the member before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

(i) the member has accrued at least four years of service credit and has attained an age of 65 years;

(ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;

(iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years;

(iv) the member has accrued at least 30 years of service credit; or

(v) the member has accrued at least 25 years of service credit, in which case the member shall be subject to the reduction under Subsection 49-13-402(2)(b).

(2) (a) The member's retirement date:

(i) shall be the 1st or the 16th day of the month, as selected by the member;

(ii) shall be on or after the date of termination; and

(iii) may not be more than 90 days before or after the date the application is received by the office.

(b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

(3) (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.

(b) A member who is employed by a participating employer and who is also a part-time appointed board member is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).

Amended by Chapter 15, 2014 General Session

49-13-402. Service retirement plans -- Calculation of retirement allowance -- Social Security limitations.

(1) (a) Except as provided under Section 49-13-701, retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which event no reduction is made to the allowance.

(c) (i) Years of service include any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(4) (a) (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the State Board of Regents to \$4,800.

(ii) This limitation is not applicable to retirees who elected to continue in the Public Employees' Contributory Retirement System by July 1, 1967.

(b) Periods of employment which are exempt from this system as permitted under Subsection 49-13-203(1)(b) may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the State Board of Regents based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Amended by Chapter 15, 2014 General Session

49-13-403. Allowance payable by lump-sum payment.

(1) If a retiree's allowance, as computed under Section 49-13-402, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.

(2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-404. Lump-sum death benefit for retiree and spouse.

(1) (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.

(b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

(c) The board shall make rules for the administration of this lump-sum death benefit.

(2) (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.

(3) (a) A retiree whose retirement date is on or after July 1, 1995, may elect to cancel the lump-sum death benefit under this section.

(b) The cancellation under this Subsection (3) is irrevocable.

(c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Amended by Chapter 118, 2004 General Session

49-13-405. Death of married members -- Service retirement benefits to surviving spouse.

(1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-13-402 without an actuarial reduction.

(2) Upon the request of a deceased member's lawful spouse at the time of the member's death, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

(a) the member has:

- (i) 15 or more years of service credit;
- (ii) attained age 62 with 10 or more years of service credit; or
- (iii) attained age 65 with four or more years of service credit; and

(b) the member dies leaving a spouse to whom the member has been married at least six months immediately prior to the death date.

(3) The spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

(a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or

(b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(4) The allowance payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;

(c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive one-third of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.

(5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-13-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-13-501.

Amended by Chapter 439, 2011 General Session

49-13-406. Part-time elective or appointive service -- Computation of allowance.

Notwithstanding any other provisions of this title, elective or appointive service rendered on a basis not considered full time by the office, unless otherwise provided by this chapter, shall have a separate allowance computed on the basis of compensation actually received by the member during the period of elective or appointive service.

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-407. Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-13-402 or 49-13-405, if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Amended by Chapter 260, 2006 General Session

49-13-408. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.

- (1)
 - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
 - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
 - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
 - (d) The member shall pay at least 5% of the cost of the purchase.
 - (e) To qualify for a purchase of service credit under this section, the member shall:
 - (i) have at least five years of service credit; and
 - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.

(3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.

(4) Only members retiring from this system may purchase service credit under this section.

Amended by Chapter 116, 2005 General Session

49-13-501. Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.

(1) The office shall provide a death benefit for members of this system.

(2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:

(a) benefit levels;

(b) classes of members; and

(c) a living benefit option.

(3) This death benefit is payable when:

(a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-13-402 requires to be treated as the death of a member before retirement;

(b) the office receives acceptable proof of death; and

(c) benefits are not payable under Section 49-13-404.

(4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:

(a) the return of any member contributions under this chapter; plus

(b) a percentage of the final average salary of the member to be determined by the board.

(5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.

(6) The cost of the death benefit shall be paid by the participating employer as a portion of the contribution rate established under Section 49-13-301.

(7) The portion of the death benefit provided under Subsection (4)(b), may not be paid to the beneficiary of an inactive member unless:

(a) that member has 10 or more years of service credit prior to July 1, 1987; or

(b) the death of the member occurs either:

(i) within a period of 120 days after the last day of work for which the person received compensation; or

(ii) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.

(8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.

(10) Payment of the death benefit by the office constitutes a full settlement of

any beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.

(11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.

(12) A death benefit under this section may not be paid on behalf of a retiree under this system.

Amended by Chapter 316, 2013 General Session

49-13-701. Early retirement incentive -- Eligibility -- Calculation of benefit -- Payment of costs -- Savings to be appropriated by Legislature -- Restrictions on reemployment.

(1) Any member of this system may retire and receive the allowance allowed under Subsection (2) if the member meets the following requirements as of the member's retirement:

(a) the member is eligible for retirement under Section 49-13-401, or has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the participating employer; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).

(2) (a) A member who retires under Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.

(b) No actuarial reduction may be applied to the allowance granted under this section.

(3) In order to receive the allowance allowed by this section, a member shall submit an application to the office as follows:

(a) (i) For state and school employees under Level A, the application shall be filed by May 31, 1987. The member's retirement date shall then be set by the member on the 1st or 16th day of July, August, or September, 1987.

(ii) If a Level A member elects to retire, the executive director or participating employer may request the member to delay the retirement date until a later date, but no later than June 30, 1988.

(iii) If the member agrees to delay the retirement date, the retirement date shall be delayed, but service credit may not be accrued after the member's original retirement date elected by the member, and compensation earned after the member's original retirement date may not be used in the calculation of the final average salary for determining the retirement allowance.

(b) (i) For political subdivision employees under Level B, the application shall be filed by September 30, 1987.

(ii) The member's retirement date shall then be set by the member on the 1st or 16th day of July, August, September, October, November, or December, 1987.

(4) (a) The cost of providing the allowance under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary

and approved by the board.

(b) The cost of providing the allowance under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections (4)(a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (4)(d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under Level B, by direct contributions by the participating employer.

(d) (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections (4)(c)(i) and (c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.

(ii) In the case of Subsection (4)(c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection (4)(c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive.

(iv) The State Office of Education and the participating employer may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section is subject to Sections 49-11-504 and 49-11-505.

(6) The board may make rules to administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Amended by Chapter 264, 2010 General Session